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A D D R E S S

COMMEMORATIVE OF

RUFUS CHOATE,

BY

THEOPHILUS PARSONS.

DELIVERED BEFORE THE STUDENTS OF THE LAW SCHOOL
OF HARVARD UNIVERSITY,

AT THEIR REQUEST,

On the 29th of September, 1859.

BOSTON:
LITTLE, BROWN, AND COMPANY.

1859.

A D D R E S S

COMMEMORATIVE OF

R U F U S C H O A T E,

BY

T H E O P H I L U S P A R S O N S .

DELIVERED BEFORE THE STUDENTS OF THE LAW SCHOOL
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AT THEIR REQUEST,

On the 29th of September, 1859.

B O S T O N :
L I T T L E , B R O W N , A N D C O M P A N Y .

1 8 5 9 .

University Press, Cambridge :
Printed by Welch, Bigelow, and Company.

CAMBRIDGE, MASS., October 12, 1859.

PROFESSOR PARSONS : —

DEAR SIR,—By a vote of the Assembly of Harvard Law School, the pleasing duty devolves upon us to return to you the thanks of the Assembly for the interesting and instructive Address delivered before the members of the Law School, September 29th; and being desirous to have it in a permanent form, we have been instructed by the Assembly to request a copy of the same for publication.

Hoping a favorable answer, we remain,

Yours, &c.,

W. H. LILLY,
W. H. LIVINGOOD, } *Committee.*
W. J. STANLY,

DANE HALL, October 12, 1859.

GENTLEMEN,—

I am glad to learn by your kind note, that my Address was satisfactory to the students of the Law School, for whom it was prepared; and I am happy to place a copy at your disposal.

Very respectfully and sincerely,

Your obed't servant,

THEOPHILUS PARSONS.

TO MESSRS. W. H. LILLY, W. H. LIVINGOOD, AND W. J. STANLY.

A D D R E S S .

No man dies wholly, even as to this world. When the soul ascends to another sphere of existence, and the body is placed in the earth to mingle with it once more, there is still something which remains with them whom the departing spirit has left, something which has not gone up out of our sight, nor down into the grave to rest in silence, and decay. It is the growth, the flower and the fruit of the seeds the man was planting in the fields of life as he walked through them ; it is the influence and effect of his life. For this is a work which every man must do. Science assures us that there is no act of our lives which is not immortal in its consequences ; that when one places his foot upon the ground, or gives utterance to a thought, the earth upon which he treads and the air which he has made vocal receive impressions or vibrations, and never can be again precisely what they would have been had these not been made ; and therefore the universe

may be said to consist of the records of all past events, of all men's actions, of all human life. It is not easy to have a clear apprehension of this fact, even if we yield assent to the demonstrations of science. But there is an analogous truth, more real and more vital. It is, that the universe of mind, of thought and feeling, the world of human character, consists of the contributions made to it by all who have lived. And therefore every man, while building up his own nature and destiny, is preparing for others an inheritance which he cannot but transmit, and they cannot but receive. If this be an inheritance of woe, well may the thought sharpen the last agony. If of good, well may it bring comfort and strength. There are those who have thought that such a hope as this could mingle with those which point to other worlds only to mar them, — only to cumber the spirit, and bind to it a burthen of earthly thoughts and cares. But surely it need not be so. When the Roman poet rejoiced that he had builded for himself a monument, “*ære perennius,*” he adds: —

*Non omnis moriar, multaque pars mei
Vitabit Libitinam.*

It was in his mind more than a hope; it was a certainty of joy and exultation, that in the remembrance of him which would linger among men, a large part of himself would escape the grasp of the

grave. And certainly the Christian need not lose a consolation which the heathen had. Certainly the hope that he leaves a fair name and a wholesome influence, and that coming generations will rejoice to keep his memory green, may blend with the hope of entering upon new scenes of usefulness and happiness, and give to it confirmation and gladness. Certainly one need not value less the immortality of the spirit which comes when all that can perish is cast away, because this hope promises an immortality of good influence. It is not true, that, while

“The evil that men do lives after them,
The good is oft interred with their bones.”

Long after the individual is wholly forgotten, the influence which he exerted upon the generation which remembered him, and which entered as a vital element into its character, passed onward to the next; and this indefinitely, and it may be with increasing force, even when the effacing flow of time has swept his name away so that no human lip can utter it.

It is not given to any man to die and make no sign; but how vast, how immeasurable the difference between the signatures impressed upon their times by different men! There are those who go down to their graves by a silent and unnoticed path, and who would leave nothing to live after them, were it not the universal law that every man must

add his mite, however small, to the common stock of human life. There are others, the few grand historical names, which, like the brighter stars of heaven, stud at great distances the night of the past, whose glory has not been touched by the fingers of decay, and the circles of whose fame and influence perpetually enlarge, but do not grow feebler as they expand.

Between these extremes all men stand. Far the greater number incline to the lower of the two ; but there are in every age and place the great men of that time, and their place is nearer the summit. Assuredly I need not fear that it will be thought to be the language of flattery or panegyric, if it be said that he whose death we have met this day to commemorate had his own place among great men. For he was a great man, if eminent abilities, carefully cultivated and industriously exercised, and occupying a large field of action with great labor and great success, and filling a wide and ever widening sphere with his renown, could constitute a claim to greatness. It is many weeks since he died ; but even now distant echoes still reach us, and tell us that his fame at home has gone abroad, and was welcomed and accepted there as true and genuine fame.

Gentlemen of the Law School, you have asked me to speak to you of Rufus Choate. I ought to comply, gladly, with any request of yours within my

power; and I ought to be able to speak to you of him, if a long and unbroken intimacy could enable me to do so.

Every individual is in some respects unlike any other, and has qualities and combinations of qualities which belong to him and to no other. But most men may be divided into classes, and conform more or less to certain acknowledged standards or models. Rufus Choate had for these very little conformity or resemblance. He was, in no sense and in no respect, a common man. Among all whom I have known, there is no one whom I should more unhesitatingly or more emphatically call a peculiar man. His mind was constructed as no other man's was. Well may I doubt my own ability to penetrate into the adyta of such a structure, and reveal to you its secrets. I make no pretence to this capacity of analysis or presentation. And time and your patience would wholly fail me, if I attempted to give a complete picture of this man. You will, I am sure, wish me to remember that I am speaking to students of law, and confine myself to a consideration — and even that must be most imperfect — of those traits of character which may suggest to you, in your peculiar position, valuable instruction. Large and rich is the legacy which he has left for all. Let me assist you in determining how much of this belongs peculiarly to you, and in making this your own.

It is about twenty-four years since I first became acquainted with Mr. Choate. I knew that he had recently removed to Boston, from Essex County, and was regarded already as a distinguished man. He was my antagonist in a case of considerable importance and difficulty ; and when he died, my conviction that he had become a great man, and had succeeded most thoroughly in his profession, was not stronger than it was, at the close of that first case, that he would become a great man, and that he would succeed most thoroughly. I beg you not to understand me as saying this to intimate my own sagacity and foresight. I speak of it only to illustrate the marked and salient character of his prominent qualities, — of those, I mean, which won for him his great success. These were, indeed, too obvious to escape notice ; and if it was their existence which gave him his high place, it was their obviousness which made his ascent rapid and continuous and unchecked, from the very beginning, and only the fulfilment of hopes and anticipations which began in his boyhood.

I have said that Mr. Choate was a peculiar man, whom it was difficult to class with others. I have known but one man whom he resembled. The earliest impression he made upon me was from his similarity in some important points with William Pinkney, of Baltimore. This gentleman I had known intimately, having passed some months in his family ;

and during his last winter in Washington I saw him perhaps every day, from the meeting of the Senate of which he was a member, to the hour when I stood by his death-bed. I was a young man then, and I have thought that it was perhaps because I was young that Mr. Pinkney excited my admiration as he did. He certainly seemed to me the most brilliant person I had ever known ; and if I did not call him the greatest advocate in the country, it was because Mr. Webster had begun to dispute the supremacy, which until then had not been questioned. Well do I remember, and never can I forget, the last case in which these giants encountered, — the last in which Pinkney appeared. Almost immediately after it he died of apoplexy, caused, as some supposed, by his great efforts to preserve that sovereignty which had been unchallenged so long. The main question of the case related to the invention and working of certain machinery, and only genius like his own could have imparted to it a particle of interest for the common ear. But during all his long argument the room was crowded, and about the doors were those who waited obstinately, if not patiently, for the opportunity, which seldom occurred, when some one of the audience was called away, — for no one seemed to leave the room but upon compulsion. Like others there, my ear and eye belonged, for the time being, to the orator ; but

I could not avoid noticing a picture which at this moment I recall. In front of Pinkney sat the Supreme Court, with Marshall in the centre; and they too watched his words, and caught the treasures of law, logic, and learning which dropped from his lips. But behind the orator, and at his right and left, was a mingled audience of all ages, of both sexes, of those who had come from the seats of the highest culture this country possessed, and those whose distant homes were in the far boundaries which civilization had but just invaded; and all, all alike, sat or stood fascinated and charmed; and I use these words in their original sense, for his hearers seemed to yield themselves up to the magic of an enchanter. As I listened I thought then, and as I remember it I think now, that the effort of that day presented to me all that learning could give, and all that the severest logic could do, and all of this used and wielded with perfect skill and the most consummate rhetoric. That impression is vivid at this day. So soon after it was made as when I first knew Mr. Choate, it was uneffaced and clear; and when I left the court-house, at the close of the case which he conducted, my first remark to a friend was, "I have heard the man who is to replace William Pinkney."

My acquaintance with Mr. Choate continued, and in a short time he took rooms in the same building

in which my office was, and we became intimate. It was common for us to meet in the evening, and in other moments of leisure ; for though his business was soon large, it was not so great and so engrossing as it became afterwards. And when we met, there was scarcely any topic which thought can contemplate that we did not discuss. Until I came to Cambridge, although our meetings had become less frequent, that intimacy was unbroken ; but to this day the opinion I formed of him at the beginning of our acquaintance has never varied. It has been developed, completed, and confirmed, but never materially changed.

I suppose that I saw first what all others did ; and perhaps I saw most clearly what most observers outside of our profession saw nearly alone, — and that was his wonderful rhetoric. But I also saw what no opponent of Mr. Choate, in a case in which he put forth his whole powers, ever failed to see, — that he was not a mere rhetorician. His perceptions were quick and clear, and his memory retentive, his powers of acquisition quite remarkable, and his industry incessant and zealous. How could he fail to be learned ? I have indeed no hesitation in saying that he was one of the most learned lawyers I have ever met with. And his learning was excellent in its kind and quality. He was sagacious, and early discovered how to study, and what to study.

While remarkably familiar with the leading authorities on all important topics, and knowing them well as mere cases, he did not know them merely as cases; for they had yielded to him their principles and their reason; and they, implanted in his own mind, germinated like living seed in a rich soil, and bore their proper fruits; and these were always within reach of his hand.

Nor was it learning only that he possessed. No man surpassed him in logical power. He could envelop his hearers in a chain of reasoning, close, direct, and conclusive. He never gave to his argument the aspect or formality of logic, but all the force of logic was there; and incessant practice had given him wonderful skill in making even abstruse reasoning not merely apprehensible, but so penetrating, as it were, that it reached and convinced the dullest intellect. He knew well in every case what premises were needed, as his point of departure; and they who set out with him on his journey from these, as the starting-point, must go with him to the end.

He was not only a logician, but he was also a rhetorician; and he was a complete and perfect one; and if you, too, say that he was a most successful lawyer, *because* he was a rhetorician, you will but fall into the common error. It is, however, an error,—a mere error,—and to you it may be a

dangerous error. I have called it a common error; and to some extent it was a universal one. I am quite certain that, high as his reputation stood, he would have had even more credit as a man of learning and of logic, if his rhetoric had been somewhat less splendid and exuberant. This shone always, and brilliantly, and every one saw it, and few persons asked what more there was. Client, jury, audience, gazed with delight upon his wreaths of flowers, and did not suspect that their rich and rare beauty enwrap and concealed a sword which no armor was strong enough to resist.

His rhetoric was very powerful, because it was the instrument of very great learning, and of very remarkable powers of reasoning. Without these it would have been not merely powerless, but much worse. There is nothing from which the instinctive common sense of this community, sooner or later, shrinks away with more disgust, than eloquence which amounts to nothing, — which, like a soap-bubble, shines and glitters only because it is very thin, and contains only air, and has no attraction but for the child and the childish.

I have said that his rhetoric was the instrument of his learning and his logic. Putting these aside, and viewing it only in itself, we should find that it consisted, as perhaps all good rhetoric does, of two elements, — one supplied by his imagination, the other

by his marvellous command of language. It would seem impossible for a richer or readier imagination to exist. It was difficult to believe, when he poured forth the most varied and the most beautiful illustrations, that he had not sought for them diligently, and found them only by patient labor. But let the course of argument take a new and unexpected turn, and the very exigency opened new resources. Meet him in a bookstore, and in the casual talk of a moment he would drop, as if unconsciously, gems of wit and fancy, that you would bear away as food for pleasant thought. His imagination was as natural and facile as it was prompt and fertile; but, as I think, he was always, or nearly always, its master. There may have been times when calm criticism would have called it excessive and wanton. I think, however, that nearly always he used it with admirable skill to illustrate and enforce his thoughts and lead to his own conclusions, or to lead away from adverse conclusions, and to charm his hearers so that they should listen only to him. Even in his wildest flights, which seemed to bear him away far from all relation to the topic of the moment, I have thought he was endeavoring, and not always in vain, to carry his audience away where they should neither hear nor see the things to which he would have them blind and deaf.

How shall I speak of his wealth of words, — of this

golden setting of his gems of thought? It would require words like his own to present this adequately. Here, so far as my knowledge of men extends, he was absolutely without an equal. Mere fluency is common enough, and of no great worth. You often meet with one who is never at a loss for a word; Choate was never at a loss for *the* word. All the resources of our language were at his command. He cultivated this faculty carefully and diligently, through the whole of his life. Years ago he established the habit of selecting from some classic author a passage of peculiar force and beauty, and translating it into English in the most perfect manner. He would return day after day to the same passage, and never leave it until he had exhausted the resources of the language in giving to the sentence exactness, strength, and elegance. I have been told that there were certain writers whom he often read, or rather studied, as his masters of speech. Jeremy Taylor was one of these; and I have often thought that he resembled, and perhaps equalled, Taylor in the splendor, the inexhaustible variety, and the picturesque beauty of his diction. And he resembled him also in sometimes yielding to his love for word-painting, until one of his long sentences, with its accumulation of epithets, its involved phrases, and its crowd of beautiful words and images, resembled not so much a finished picture as the palette of the artist,

rich and glowing with hues of every tone, laid each in its place, as the artist knows, but seeming to be there only where accident placed them.

With all his variety and intensity of labor, there was nothing he cultivated with more care than words. And there were those who smiled at this, as at a weakness of this strong man. But let it not be forgotten that no one knew better than he that words are but instruments for the presentation of thoughts, and that their true worth and power depend wholly upon the thoughts they clothe. If an apology were needed, it might be enough to say, that one who labored so effectually to have thoughts worth the saying might be pardoned if he strove to give his thoughts an appropriate dress. But no apology should be made. It is a great mistake to value words as having in themselves a power to teach, persuade, or convince, and therefore to cultivate the faculty of speech as if it could conceal or supply a deficiency in the faculty of thought. The other and opposite mistake is to suppose that good thoughts will always clothe themselves adequately, and that, if we do but fill the mind with things which should be said, fitting expressions will occur spontaneously. Mr. Choate made neither of these mistakes. The young student errs in the first way when he values fluency and facility of utterance too much, and gives too much of his time and care to

the cultivation of this faculty ; or, if he happens to possess it, trusts to it as the chief quality upon which the lawyer can depend, and as that which, of itself, will insure him success and distinction. This is, indeed, a fatal mistake. Go to any of those who have the benefit of long experience, and have profited by it, and ask them if they have not often seen this facility of speech a hindrance and a plague ; so great a hindrance that they have lamented to hear a young man characterized as finding words at will, and taking pleasure and pride in their display. They will tell you that many a man has rested for life in the lower ranks of the profession, because he had this fatal facility, and trusted to it.

A word is the body of a thought, and the very common mistake of not looking beyond the mere external is made as often here as elsewhere. It leads men, and sensible men too, who happen not to be wise upon this point, to refer to a mere power of words effects and influence which belong to the thought within. It is such a mistake as that which should attribute to a man's muscles the triumph which he had won by his mind, or to the excellent material and form of his clothing work which only the strong frame within could do. There are triumphs which muscles alone can win ; there is a charm which dress alone may possess. But the triumphs are not those which men with souls as

well as bodies should estimate very highly ; and the charm of dress is one which is not usually valued greatly by those whose high estimation is very desirable. And yet it is surprising how constantly the mistake of referring to words alone, to the mere power of utterance, a work and a success which are due to faculties of which these words are but the instruments, is made by sensible men.

In the life of George Stephenson the engineer, a man of very remarkable ability, I recently met with this anecdote. At a dinner party at Sir Robert Peel's, whom he was visiting, with a large company, he engaged in a controversy with Dr. Buckland upon some question of geology, and the Doctor silenced him soon and easily. After the dinner, he fell in with Sir William Follett, then the leading lawyer of England, and complained to him of his defeat. "It is too bad," said he, "for I know I was right, and if I had only Buckland's power of words, I should have made it appear." Follett amused himself with mastering the points and principles of the question, and the next day at dinner the subject was again brought up, and Follett joined in the conversation, and very speedily and effectually baffled and silenced Buckland. "What do you say to that, Mr. Stephenson?" said Sir Robert Peel. "Why," said he, "I will say only this, that of all the powers above and under the earth, there seems to me no power so great as the gift of the gab."

By this somewhat coarse expression, Stephenson simply meant the gift of words, — the power of utterance. But was it the gift of speech which enabled the lawyer to look through the mists of their loose talk, and see plainly where Stephenson was right and could be defended? Or was it his clear and trained intellect, and his prompt and perfect logic, which gave him the power of penetrating to the very heart of the question, and of keeping his opponent to the exact point at issue, and of compelling him to abandon sophistries and side issues, and, when he had been driven to his inmost citadel, of forcing him to surrender that as utterly untenable? And yet not Stephenson only, but very possibly every man at the table, as they enjoyed this gladiatorial amusement of the great lawyer, looked upon it as a mere victory of words.

I have related this anecdote because it seems to me to illustrate perfectly a very common mistake in relation to Mr. Choate. His victories too were sometimes regarded as victories of words; and his consummate logic, his accurate and well-digested and well-used learning, remained unseen, hidden by the splendor of his language. I beg you to remember, and to be sure, that neither his words, nor any words alone, could have won his victories. And then you may remember safely how varied and how magnificent that language was; then you may safely and wisely give a due share of labor and of watchfulness

to possess a power of words which shall do full justice to whatever learning or power of argument you may acquire. For, as I have already intimated, the mistake of valuing words too highly for themselves has for its opposite mistake that of not valuing them enough as the adequate expression, the fitting instrument, of powerful thought.

I cannot but regard word-painting as among the fine arts, and as standing very high among them. A word, gentlemen,—is it not the instrument of mind as much as the pencil or the chisel? Is it not its instrument for as high a purpose? Will it not present to the mind's eye the beauty of thought and feeling, nay, all that one human soul can offer to another of majestic truth, of tenderness, of strength, of purity, of grace? An anecdote which has come down to us from the land and the age of Phidias imports that the sculptor finds his statue in the marble, and that it is his work to liberate it from the stone. Not so. The canvas and the marble only present, transferred to their material substance, the lines, the hues, and forms which must first exist in the mind of the artist. It is his first work to bid them live definitely and completely in his imagination. It is his second work to bring them from within, without; and invest them for the enjoyment and the instruction of others in the permanent material he employs. Is it not high art also to construct within

the mind great thoughts, and convincing arguments, and fair imaginations, and luminous illustrations, and present them to others, glowing with beauty and instinct with life? Is it not more than art to bid a great truth be born, and clothe it with a form which shall protect and preserve it, and insure to it long life and wide reception and utility?

The poet has one form of this faculty, the orator another; and, let a mistaken disdain cast what contempt it will on words, we have not reached an age or a condition when words are not things, and, if they have within them the living force of thought, things of beauty and of power.

The division of professional labor is not carried quite so far in this country as in most others; but something of it exists here, and peculiarities of taste, of temperament, and of faculty usually determine the path which each man follows. Mr. Choate's natural gifts of persuasion, his marvellous power of giving forth all that was in him, and combining for this purpose learning, logic, and rhetoric, and his keen enjoyment in the exercise of these gifts, made it impossible that he should not be the consummate forensic orator, the great advocate.

We have, in our profession, those whom every question presented to them provokes, and, as it were, compels to a decision of it in their own minds. The first thing they must do with it is to answer it, to

judge it ; and such a man has by nature what may be called a judicial mind. There are others who see only what offers itself to them as their own side, and who have no desire to see any other, except in its relations to their own ; and all their resources and ability are exerted to establish that as right and triumphant. Such a man has a forensic mind. And I should say that Rufus Choate had not a judicial mind, but that he had, in its very perfection, a forensic mind.

There are those again whose reasoning faculty is guided and governed by something over which they do not seem to possess an absolute control. It refuses to be blind. It cannot but do its proper office, and distinguish between the true and the false, the right and the wrong. It may be mistaken, but it cannot help being faithful to itself. And therefore such men are absolutely unable to present what they do not see to be true in such a guise to others that they shall see it as true. They cannot do this even when they would. Daniel Webster was, in my judgment, an example of this ; and hence it was a common saying with the profession, that if Webster had a bad case, he was very apt to make a feeble argument. It was not so with Mr. Choate. While no one had a greater capacity for the most direct argumentation founded upon the truest logic, he had an equal power of breaking into fragments any chain

of reasoning which threatened to fetter him, and of making a hostile reality look, for the moment at least, dim and dark, beside the seductive appearance he offered in its stead.

Few men who possess this dangerous power are able to resist the enormous temptation to use it which our profession offers. And difficult, very difficult, is the question of duty sometimes presented to the lawyer. There are those, both within and without the profession, who see no difficulty there. On the one hand, they say, no man can have a right to do wrong; no man should be less a man because he is a lawyer; and an honest lawyer will remember that he should be devoted to the service of truth and of justice; and that it is his high office, his great privilege, to make them always and everywhere triumphant; and he will think of them, will care for them, will labor for them always and everywhere, be his client or his case what they may. Or, on the other hand, they will be sure that it is always the duty of a lawyer to be faithful and true to the client who places his interests, perhaps his life, in his hands. They will say, in all sincerity, that the law itself is there, above all and watchful over all; that the court are there to administer and apply the law impartially, and the jury are there to pass impartially upon the facts. But in order that the whole truth may be discerned, and full justice be done,

that the court and the jury may be enabled to do their work intelligently and thoroughly, trained and able counsel should present all that can be urged in favor of the one side and of the other, each remembering his own side, each regardless of the other, for in no other way can the court and jury be put in complete possession of the whole case, in all its aspects and all its relations. Between these extremes, as it seems to me, lies the difficult and narrow path which the lawyer should pursue.

Certain it is that every man charged with crime has a right to be tried according to law, and to be convicted and punished only if the law permits. And every man is entitled to claim for all his civil, his social, and his pecuniary rights and interests, the protection of the law. The degree in which this right is admitted, or, in other words, the degree in which all men consent to submit to the sovereignty of an impersonal and impartial law, constitutes one of the tests of civilization. The law is necessarily imperfect, and must sometimes be erroneous ; but, in any given case, it is more likely to be right than any one individual. The law should be the embodiment of the wisdom, the judgment, and the justice of all. It should be truth in act. And the more its great function is respected, the more carefully it will be watched, and the more promptly and the more wisely its errors will be corrected and its deficiencies sup-

plied. Would we have it here as it is in Turkey, for example, where the Cadi decides each case, as it comes before him, according to his impression of its merits, or his feeling towards the parties? But even there, some pretence is made of supporting the decision by a reference to ancient apothegms and recognized principles.

In England and in this country we have laws, and rules subsidiary to these laws, the purpose of which is to make it certain, so far as it may be, that every case shall be tried and determined, not by the uncertain and fluctuating will or opinion of any man, but by principles of evidence, of practice, and of law. There can be no greater mistake in a community than to look with dislike and distrust upon this system because, *being a system*, it must be applied without favor or exception, and may therefore work individual hardship. And akin to this is the error of supposing that an honest lawyer will not engage in a case which, as it seems to him, morally, should not prevail. It might almost as well be said, that the court should condemn without trial one whom they think guilty. A lawyer is a sworn officer of the court; he is, in an important sense, a member of the judicial department of the State. Let him, then, be true to the Constitution and the law which he has sworn to support, and to that system of rules which is the best result that the best efforts of the

best intellects, continued through centuries, have been able to devise for the protection of all the interests of humanity. Let him not ignore the right and wrong of any case that comes before him, and discharge his duties as advocate with perfect indifference to the moral character of the questions or of the men with whom he deals. Nor let him save his conscience by the sacrifice of his judgment, and acquire the habit of considering every man who asks his services as thereby cleansed and whitened from all stain. Equally free from these errors, let him do with all his strength all that he can do to exhibit, to maintain, and to enforce whatever of law or of legal right the man or the case may have. And there is, there can be, no case, if we are to remain a civilized community, which has not its measure of law and of right, and ought not to have this asserted and protected by those who are educated and trained for this purpose. All this the lawyer who stands most strongly upon his integrity can do, — should do, — will do ; but more than this he will not do.

Let me illustrate my meaning by a supposed case. A man commits a murder. Two witnesses, of unimpeachable intelligence and veracity, two witnesses, and they alone, see the act in all its details, and tell it, precisely and in confirmation of each other, to the coroner's jury, to the grand jury, to their friends, to the public. No one doubts the fact ; no one can

doubt it. The man is indicted, and is put on trial. But then these witnesses are dead or out of reach, and they cannot be produced. Because they cannot, the government proposes to examine half a dozen of those to whom they have told the story at different times, and who took it down in writing from their lips. What shall the counsel of the accused do? Shall he say, I am sure my client is guilty, and I am sure the evidence offered is the truth, and I will not oppose it? He will not say this if he remember his duty to law and to society. For nothing can be more certain than that it is his duty to oppose with all his might the introduction of hearsay testimony. He will do all that he can to impress upon court and jury the inexpressible importance of preserving in all their force those principles and rules of law which guard, not the murderer only, but all men, in all their rights. He will, with whatever of power he can exert, impress upon the tribunal the rule that centuries have established, because the experience of centuries has taught and confirmed it, — the rule that hearsay testimony must not go to a jury. A jury must not have it, must not hear it, because it is unsafe testimony; — because it is testimony which consists in words repeated by those who only heard them from others, and thus the chance for mistake is doubled; of words which were not originally uttered under the solemn influence of an oath in open

court; which were not then subjected to the wholesome ordeal of cross-examination; which were uttered by one who did not stand face to face with the jury, that they might judge from his tone, his manner, and his appearance, what weight should be given to his words. These are the safeguards which the law has gathered round, not this murderer alone, but all innocence as well as all guilt. The barrier they construct is feeble enough against the infinite possibilities of error and of falsehood. Break this barrier down, and you may hang this man upon the gallows until he is dead; but with him dies the law.

Thanks to our admirable system, the man will not be hanged, and the law will not perish. The evidence will be rejected; the man will be acquitted; and then the cry will come up from the ignorant and the heedless, that his counsel has saved him, and has prostituted his great powers to the poor work of saving such a wretch!

And yet his counsel did not save him, but the law has saved him; and while his counsel has done but his duty in doing all he could, it is extremely probable, not to say certain, that with any counsel, or no counsel but the court, this same law, *proprio vigore*, would have had force enough to protect itself, although in doing so it protected a guilty man. So extreme a case may not often occur; but cases of

this character, and involving this same principle, are constantly occurring, and are constantly misunderstood.

May I not, then, repeat to you, that there never was, and there never can be, a case which should not be tried according to law. There never was, nor can be, a criminal who ought not to be defended according to law. There never was a case nor a criminal that a lawyer should not defend, with the profound conviction that while he keeps the law with him he is safe in his reputation, safe in his standing in the community and among his fellows. This is not mere theory. History has its word to say about it. Do you remember the dark and bloody page upon which are recorded the trials of the witches in 1692? Are you aware that the commission under which these trials proceeded was utterly illegal, and was issued by a Governor who did not know law enough to know that it was illegal? that no one who had been educated as a lawyer, or had practised as a lawyer, was included in the commission or sat in court as a judge? that none of the protective forms or rules of justice shielded those unfortunates, and that no lawyer was permitted to act as their counsel? If a lawyer had defended them, and had applied the test of cross-examination to the wild and frantic stories of the witnesses, and a judge had been there who could tell the jury what the law was, and a jury had

been there willing to learn the law and to obey it, this black and ineffaceable spot had not fallen upon the childhood of Massachusetts.

Contrast this scene with that which occurred in 1770, when Adams and Quincy defended the British soldiers who were charged with what was called the Boston massacre; defended them against an outraged community, against an infuriated people; before, or I may almost repeat my word and say against, a jury who came into court feeling that they had nothing to do but to consign these murderers to their destined doom. Was not that trial and its results a fitting glory to introduce and inaugurate a war against illegal oppression, — a war for the sovereignty of right and of law, — a war which was only a failure if it has not established here a great nation in which law is sovereign?

I have not the slightest hesitation in saying that every lawyer should defend faithfully and energetically the law of every case, and the legal right of every client. But there is no principle of universal application; there is no rule which is without exception. And while I can hardly imagine an exception to this rule in criminal cases, — for I cannot imagine a case in which the law should declare a man guilty whom the rules of law would acquit, — I am willing to admit that there may possibly be exceptional civil cases, in which only pecuniary interests are involved,

where the strict law would do great mischief, or, in legal phrase, where the *summum jus* would be but *summa injuria*. For most of these cases, if not for all, the law has adequate remedies. If it have not, and you ask of me what is my duty, I can only say, a case of this kind must be so exceptional that it can be brought under no rule ; that it cannot be comprehended until it comes ; and then you must call upon your conscience and your reason to tell you your duty, — and listen to the answer.

Remember, however, that while I give you the rule, that the lawyer should insist upon the legal rights of every client, and do all that truth and integrity permit to preserve and protect his legal interests, it is a part of this rule that he should not go one step further. No, not one step.

Do you regard this limitation as a fetter on your untried strength ? as a hindrance that will obstruct your progress and mar your success ? You long for success : it cannot be otherwise ; it should not be otherwise. Reflect, however, but a moment, and you will see, what all experience will confirm, that the effort to make wrong triumphant cannot often succeed. For what would become of society, what are all its defences and securities, if it be not the *rule* that the right prevails ? Were it not so, all our laws and institutions and policies, and all the gifts of God to man, and all man's efforts to receive them

and co-operate with the Giver, — all, all are in vain. Plant yourselves upon the right, and you stand on the side of success ; of common and immediate success generally, of genuine and permanent success always. I can give no better advice, none which I offer with more assured confidence, than when I urge you to regard conscience — I mean a conscience which is just, rational, comprehensive, and wise as it is watchful — as one of the elements of your strength, and one which will give force and efficiency to all the rest. Your perceptions will then be clearer, — your action direct and decisive ; for you will know certainly the point you aim at, and the way to it. Not more true is it in mathematics than in morals and practical life, that a straight line is always the shortest between two given points. Let not the conscience sleep, in the hope that your intellect will be the more wakeful, and your energies more unrestrained. Seek not, permit not, the torpor of the heart ; but cultivate its peace, and the invigoration which that peace brings. And then the regard and affection and sympathy of good men will wait upon you ; and society, which in the end is always wise enough to respect nothing so much, and value nothing so much, as trustworthiness, will crown you with true and lasting success.

I would now speak of a trait of Mr. Choate's character for which he was most remarkable ; and it is

one which may make his example most instructive. I refer to his indomitable industry.

As matter of testimony, permit me to say that I never knew a more industrious man. You may reply, he could not do more than work all the hours of possible work, and you have known others do that. But there is a difference in the quality of work, — a difference of great moment, and one which determines the value and the results of the labor. There are those who can pass hours with their eyes upon their books, turning over leaf after leaf, and reading every word on every leaf, with little more work, and little better effect, than if they were looking out of a window and counting the leaves upon the nearest tree. There are others who really work, who fix the mind as well as the eye, the inner sight as well as the outer, upon what they read and study; they think as they read. The rain of heaven, that brings fertility and life to a kind and prepared soil, falls upon a sand-bank, and sinks into it and through it, and leaves it the sand-bank that it was before. Few persons possess naturally the faculty of making all their study fruitful; with the most of us, the soil is sandy to begin with; but wise and steady culture will convert it into a garden.

How often have I observed, that, let a friend or client call on Mr. Choate at his busiest moment, he would turn to his visitor with all the ease of an

idler! There was no wrinkling of the brow, nothing in the look or gesture which said that the interruption was unwelcome and must be brief. He could always afford to be interrupted; and the reason was, that when the interruption was over, he could return at once to his study; and when he studied, he knew how to study.

But the point to which I would refer you particularly is the fact of his rare industry, as a proof that the highest talent needs the most sustained industry, to make it effectual. Among the most dangerous mistakes that students of the law can make are two. One is, that of supposing extraordinary talent necessary for decided success. Nothing is more untrue. Good sense, an understanding of reasonable force, clearness, and extent, these are necessary. But these qualities are not rare; and with due industry, discipline, and practice, they will insure a high position. But the other mistake is still more injurious; it is that which persuades the young man, who thinks — and with reason, perhaps — that he has extraordinary talent, that this exempts him from the universal need of industry. Let him learn from Rufus Choate's example, — for he will hardly think himself a man of higher genius, — let him learn from his habits and their results, that, for our purposes at least, *genius is nothing more than the faculty of laboring to advantage.*

Let me not forget the wide scope of his studies. They were not, as I have seen intimated, universal. Thus, it has been said, by some who have written or spoken of him, that he was well acquainted with the leading metaphysicians of ancient and modern times. I doubt whether this were so. When I was most intimate with him, his reading of this kind was very limited. I have thought that their conflicting theories and arguments called upon him to compare reasons and weigh evidence, and form his own conclusions, without the guidance of predetermined principles, or the test of practical results ; and this was an exercise of mind which he did not love. So too I have read that he had studied largely works of religious controversy ; but this also I doubt. I remember perfectly a remark he made to me some fifteen years ago. It was to the effect, that fortunately for himself a certain belief had been implanted in his mind in childhood. There it stood unmoved. And he was unwilling to listen to arguments against it, or to consider the question as open, because, said he, "I dread the laceration of mind which must be caused by rending away a faith once deeply and firmly rooted;" and he quoted from Edmund Burke a passage expressing strongly the same sentiment.

But he was a master of English literature, and an excellent classical scholar ; and it is only my own inability to judge of this which leads me to hesitate in

He could afford that I should speak of him just as I thought, because he was a great man. You called him so in the resolutions which invited me to speak of him. I repeat your words, and I do it with sincerity. I have held him up before you ; I have endeavored to deepen the deep impression such a man must make upon you ; I have endeavored to present to you as clearly as I could the valuable lessons, the great truths, of which his life and character offer suggestion or illustration, for the very reason that he was A GREAT MAN.